

JUN 2 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554 OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-107
)	
DAVID A. RINGER)	File Nos. BPH-911230MA
)	
<u>et al.</u>)	<u>et al.</u>
)	
For Construction Permit)	
Channel 280A)	
Westerville, Ohio)	

To: Administrative Law Judge
 Walter C. Miller

**MASS MEDIA BUREAU'S OPPOSITION TO
 MOTION TO ENLARGE ISSUES AGAINST WILBURN**

1. On May 17, 1993, Ohio Radio Associates, Inc. ("ORA") filed a motion to enlarge issues against Wilburn Industries, Inc. ("Wilburn"). The Mass Media Bureau opposes ORA's motion and submits the following comments.

2. In essence, ORA seeks addition of the following issues:

1. To determine whether Wilburn provides sufficient coverage to the community of Westerville as required by Section 73.315 of the Commission's Rules.

2. To determine whether Wilburn proposes a tower site in violation of Section 73.207 of the Commission's Rules.

3. ORA alleges that Wilburn's application does not show that it will provide 70 dBu coverage to at least 80% of Westerville. However, ORA provides no analysis from an engineer as to how much of Westerville it believes Wilburn covers. Further, the portion of Wilburn's application attached to ORA's motion suggests more than adequate coverage of Westerville.

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Accordingly, ORA has not demonstrated that a substantial question exists as to the adequacy of Wilburn's proposed coverage of Westerville.

4. With respect to the requested Section 73.207 issue, ORA repeats contentions considered and rejected in the Hearing Designation Order, 8 FCC Rcd 2651 (ASD 1993), and in Memorandum Opinion and Order, FCC 93M-224, released May 4, 1993. Such contentions are ordinarily not subject to reconsideration. See Annax Broadcasting Inc., 87 FCC 2d 483, 486 (1981); Section 1.106(a)(1). Nonetheless, ORA claims that its arguments warrant renewed consideration because of On the Beach Broadcasting, FCC 93-211, released May 10, 1993. Specifically, ORA contends that On the Beach requires that an applicant proposing use of a directional antenna must demonstrate that no fully-spaced sites are available.

5. ORA is wrong. On the Beach affirmed rejection of an amendment which did not comply with Section 73.215(b)(2)(ii), and in the absence of a valid proposal for use of a directional antenna, found that the applicant did not meet the requirements for a waiver of Section 73.207 of the Commission's Rules. Here, Wilburn's proposal was processed in accordance with Section 73.213(c)(1). Thus, by its own terms, the spacing limitations of Section 73.207 are inapplicable, and there was no need for Wilburn to seek a waiver of that rule or make the showing

necessary for grant of such a waiver. See HDO, 8 FCC Rcd at 2652, ¶¶ 6, 8, 10.

6. Accordingly, the Bureau opposes ORA's motion to enlarge issues.

Respectfully submitted.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, hereby certifies that she has on this 2nd day of June, 1993, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Motion to Enlarge Issues Against Wilburn"** to:

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